



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2022-0525; FRL-9961-01-R9]

Finding of Failure to Attain and Reclassification of Las Vegas Area as Moderate for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Las Vegas, Nevada nonattainment area (“Las Vegas”) for the 2015 ozone National Ambient Air Quality Standard (NAAQS) failed to attain by its applicable “Marginal” area attainment date of August 3, 2021. The effect of failing to attain by the attainment date is that Las Vegas will be reclassified by operation of law to “Moderate” upon the effective date of the final reclassification notice. Consequently, the Nevada Division of Environmental Protection (NDEP) must submit state implementation plan (SIP) revisions required to satisfy the statutory and regulatory requirements for Moderate areas for the 2015 ozone NAAQS. The EPA is proposing deadlines for submission of those SIP revisions and implementation of the related control requirements. This action, if finalized as proposed, will fulfill the EPA’s statutory obligation to determine whether the Las Vegas ozone nonattainment area attained the NAAQS by the attainment date.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0525, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to our public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the Web, Cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; By phone: (775) 434-8176 or by email at oconnor.karina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” means the EPA.

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I. Background

A. What is the background for the proposed actions?

The CAA requires the EPA to establish primary and secondary NAAQS for certain pervasive pollutants that “may reasonably be anticipated to endanger public health and welfare.” The primary NAAQS is designed to protect public health with an adequate margin of safety, and the secondary NAAQS is designed to protect public welfare and the environment. The EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants, including ozone. The NAAQS represent the air quality levels an area must meet to comply with the CAA. Ozone is a gas composed of three oxygen atoms and is created by chemical reactions between volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the atmosphere in the presence of sunlight. Ground-level ozone can harm human health and the environment. Ozone exposure has been associated with increases in susceptibility to respiratory infections, medication use by asthmatics, doctor visits, and emergency department visits and hospital admissions for individuals with respiratory disease. Ozone exposure may also contribute to premature death, especially in people with heart and lung disease.

In October 2015, the EPA strengthened the primary and secondary eight-hour ozone NAAQS from 0.075 parts per million (ppm) to 0.070 ppm (“2015 ozone NAAQS”).¹ In accordance with section 107(d) of the CAA, the EPA must designate an area “nonattainment” if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area. With respect to the ozone NAAQS, the EPA further classifies nonattainment areas as “Marginal,” “Moderate,” “Serious,” “Severe,” or “Extreme,” depending upon the ozone design value for an area.² As a general matter, higher classified ozone nonattainment areas are subject to a greater number of, and more stringent, CAA planning requirements than lower classified areas but are allowed more time to demonstrate attainment of the ozone NAAQS.³

¹ 80 FR 65291 (October 26, 2015).

² See CAA section 181(a)(1). For the 2015 ozone NAAQS, the design value at each monitoring site is the annual fourth-highest daily maximum 8-hour average ozone concentration, averaged over three years. The design value for an area is the highest design value among the monitoring sites in the area.

³ See, generally, subpart 2 of part D of title I of the CAA.

Effective August 3, 2018, the EPA designated and classified the Las Vegas portion of Clark County as a “Marginal” nonattainment area for the 2015 ozone NAAQS.⁴ The EPA’s classification of Las Vegas as a Marginal ozone nonattainment area established a requirement that the area attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than three years from the date of designation as nonattainment, i.e., August 3, 2021.⁵

B. Overview of Proposal

The EPA is required to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain.⁶ For a concentration-based standard, such as the 2015 ozone NAAQS,⁷ a determination of attainment is based on a nonattainment area’s design value.⁸

The 2015 ozone NAAQS is met at an ambient monitoring site when the design value does not exceed 0.070 parts per million (ppm). For areas classified as Marginal nonattainment for the 2015 ozone NAAQS, the attainment date is August 3, 2021. Because the design value is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31 of the year prior to the attainment date (i.e., December 31, 2020, in the case of Marginal nonattainment areas for the 2015 ozone NAAQS). As such, the EPA’s proposed determination is based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2018, 2019, and 2020.

On November 30, 2020, the Clark County Department of Environment and Sustainability (DES) submitted an initial notification for an intended exceptional event (EE) demonstration, and on July 1, 2021, submitted EE demonstrations for 2 days in 2018 and 6 days in 2020 with

⁴ 83 FR 25776 (June 4, 2018).

⁵ See 40 CFR 51.1303(a).

⁶ See CAA section 181(b)(2).

⁷ Because the 2015 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as “the 2015 ozone NAAQS” or as “the standard.”

⁸ A design value is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The design value for the 2015 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The design value is calculated for each air quality monitor in an area and the area’s design value is the highest design value among the individual monitoring sites in the area.

exceedances of the standard. On September 2, 2021, the Clark County DES submitted additional EE demonstrations for 13 days in 2018 and for 7 days in 2020. The EPA's actions on these demonstrations affect the determinations of attainment by the attainment date for the Las Vegas area.⁹ The EE initial notifications, EE demonstrations, and the EPA's responses to the initial notifications are provided in the docket for this rulemaking.

The data used to calculate both the 2018-2020 design values and the 2020 fourth highest daily maximum 8-hour averages can be found in the docket for this rulemaking.¹⁰ Based on this data and as explained further below, the EPA proposes to determine that Las Vegas did not attain by the attainment date because the area's 2018-2020 design value is greater than 0.070 ppm. Additionally, the area does not qualify for a 1-year extension of the attainment date because the fourth highest daily 8-hour average value in 2020 is greater than 0.070 ppm. If the EPA finalizes the determination that the Las Vegas nonattainment area failed to attain by the Marginal attainment date consistent with CAA section 181(b)(2)(A), the Las Vegas nonattainment area will be reclassified to Moderate by operation of law and will then be subject to the Moderate area requirement to attain the 2015 ozone NAAQS as expeditiously as practicable, but not later than August 3, 2024.

Once reclassified as Moderate, NDEP must submit to the EPA the SIP revisions that satisfy the statutory and regulatory requirements applicable to Moderate areas established in CAA section 182(c) and in the SIP Requirements Rule for the 2015 ozone NAAQS.¹¹ The EPA proposes to establish deadlines for submitting SIP revisions for this reclassified area, consistent

⁹ CAA section 319(b) defines an exceptional event as an event that (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by the Administrator through the process established in the regulations to be an exceptional event.

¹⁰ United States Environment Protection Agency, Air Quality System, Design Value Report, 2018-2020, Clark County, NV, dated June 7, 2022. Note that design values reported for a given year reflect data from that year and the two previous years, e.g., the design value for 2020 reflects data from 2018-2020.

¹¹ See 83 FR 62998, December 6, 2018.

with CAA section 182(i). As discussed in Section II.D. of this notice, the EPA proposes that the SIP revisions will be due on January 1, 2023.

C. What is the statutory authority for the proposed actions?

The statutory authority for the actions proposed in this notice is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the CAA include, but are not necessarily limited to, CAA sections 181(a)(5) and 181(b)(2).

CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS or cannot be classified as meeting or not meeting the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, state planning, and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated based on the extent of the ozone problem in the area (as determined based on the area's design value). Classifications for ozone nonattainment areas range from "Marginal" to "Extreme" based on the severity of the area's air quality problem.

CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA's implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 51.1308 through 51.1317, also establishes the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements, and the timeframes by which nonattainment areas must attain the 2015 ozone NAAQS. For reclassified areas, CAA section 182(i) provides that the Administrator may adjust applicable deadlines other than attainment dates if such adjustment is necessary or appropriate to assure consistency among the required submissions.

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the EPA shall determine whether an ozone nonattainment area attained the ozone standard based on the area's design value as of that date. For nonattainment areas that the EPA determines to have not timely attained, CAA section 181(a)(5) gives the EPA the discretion to grant a 1-year extension of the attainment date for qualifying areas upon application by any state. In the event an area fails to attain the ozone NAAQS by the applicable attainment date and is not granted a 1-year attainment date extension, CAA section 181(b)(2)(A) requires the EPA to make the determination that an ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and requires the area to be reclassified by operation of law to the higher of: (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as of the determination of failure to attain.¹² Section 181(b)(2)(B) of the CAA requires the EPA to publish the determination of failure to attain and accompanying reclassification in the ***Federal Register*** no later than 6 months after the attainment date, which in the case of the Las Vegas Marginal nonattainment area, would have been no later than February 3, 2022.

Once an area is reclassified, the state is required to submit certain SIP revisions in accordance with its more stringent classification. The SIP revisions are intended to, among other things, demonstrate how the area will attain the NAAQS as expeditiously as practicable, but no later than August 3, 2024, the Moderate area attainment date for the 2015 ozone NAAQS. According to CAA section 182(i), a state with a reclassified ozone nonattainment area must submit the applicable attainment plan requirements "according to the schedules prescribed in connection with such requirements" in CAA section 182(b) for Moderate areas, but the EPA "may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions."

¹² The Las Vegas nonattainment area would be classified to the next highest classification of Moderate. The area does not have a design value that would otherwise place it in a higher classification (i.e., see CAA section 181(b)(2)(A) reference to Extreme areas).

D. How does the EPA determine whether an area has attained the 2015 ozone standard?

Under the EPA regulations at 40 CFR part 50, Appendix U, the 2015 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration (i.e., design value) does not exceed 0.070 ppm. When the design value does not exceed 0.070 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS. The rounding convention in Appendix U dictates that concentrations shall be reported in “ppm” to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.071 ppm is greater than 0.070 ppm and would exceed the standard, but a design value of 0.0709 is truncated to 0.070 and attains the 2015 ozone NAAQS.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System (AQS) database.¹³ Ambient air quality monitoring data for the 3-year period preceding the attainment date (i.e., 2018-2020 for the Marginal area attainment date of August 3, 2021) must meet the data completeness requirements in Appendix U.¹⁴ The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness.

II. What is the EPA proposing and what is the rationale?

¹³ The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to: (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for non-attainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the Web site at <https://www.epa.gov/aqs>.

¹⁴ See 40 CFR part 50, Appendix U, section 4(b).

The EPA is proposing this action to fulfill its statutory obligation under CAA section 181(b)(2) to determine whether Las Vegas attained the 2015 ozone NAAQS as of the attainment date of August 3, 2021.

A. Evaluation of Design Value Data and Exceptional Events Documentation

The EPA evaluated air quality data to determine if the Las Vegas Marginal nonattainment area attained the 2015 ozone NAAQS by the attainment date of August 3, 2021 and, if the area did not attain, to determine if the area is eligible for a 1-year extension of the attainment date. The area's ozone design values for 2018-2020 are shown in Table 1. Based on the certified, complete data from 2018-2020, the design value for the area is 0.074 ppm and the 2020 4th highest daily maximum 8-hour average is 0.078 ppm.

Table 1 - 2015 Ozone Design Values and 2020 4th Highest Daily 8-hour Average in the Las Vegas Area

Location	AQS Site ID	2018-2020 Design value (ppm)	2020 4th Highest daily maximum 8-hour average (ppm)
Paul Meyer	320030043	0.073	0.077
Walter Johnson	320030071	0.073	0.077
Palo Verde	320030073	0.067	0.067
Joe Neal	320030075	0.074	0.078
Green Valley	320030298	0.072	0.071
Jerome Mack-Ncore	320030540	0.069	0.067

On November 30, 2020, the Clark County DES submitted an initial notification for an intended EE demonstration, and on July 1, 2021, submitted EE demonstrations for two days in 2018 and six days in 2020 with exceedances of the standard. On September 2, 2021, the Clark County DES submitted additional EE demonstrations for thirteen days in 2018 and for seven days in 2020. The EPA's actions on these demonstrations affect the determination of attainment

by the attainment date for the Las Vegas area.¹⁵ The EE initial notifications, EE demonstrations, and the EPA's responses to the initial notifications are provided in the docket for this rulemaking.

In order for the Las Vegas nonattainment area to have an attaining 2018-2020 design value for the 2015 ozone NAAQS, the EPA would have to concur on most of the EE demonstrations that the Clark County DES submitted for 2018 and 2020. Furthermore, to qualify for an extension of the attainment date, the EPA would have to concur on most of the EE demonstrations submitted for 2020. The EPA responded to Clark County's EE Initial Notification submittal for intended EE demonstrations, dated November 20, 2020, indicating that the events described may affect a future regulatory decision.¹⁶ Because regulatory significance is required for EPA concurrence on an EE demonstration and subsequent exclusion of the event-influenced data from the design value, the EPA therefore determined it would evaluate the demonstrations submitted by Clark County under the Exceptional Events Rule (EER).¹⁷ In an April 26, 2021 letter, the EPA clarified that the demonstrations for seven of the events, listed in Table 2, would be critical and analytically complex. Based on the nature of the events and the anticipated timing of the EPA's determination of whether the Las Vegas nonattainment area attained by the applicable attainment date, the EPA requested these demonstrations be submitted by June 1, 2021.¹⁸ The EPA requested the demonstrations for the remaining demonstrations be submitted by August 1, 2021.¹⁹ The dates for submittals of the demonstrations were revised in a May 4, 2021 letter to be no later than July 1, 2021 and September 3, 2021, respectively.

¹⁵ CAA section 319(b) defines an exceptional event as an event that (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by the Administrator through process established in regulation to be an exceptional event.

¹⁶ Letter from Elizabeth J. Adams, Director, R9 Air and Radiation Division to Michael Sword, Air Planning Manager, Clark County Department of Environment and Sustainability (January 26, 2021).

¹⁷ Id.

¹⁸ Letter from Elizabeth J. Adams, Director, R9 Air and Radiation Division to Marci Henson, Director, Clark County Department of Environment and Sustainability (April 26, 2021).

¹⁹ Id.

Table 2 – Summary of Critical and Analytically Complex Exceptional Event Demonstrations in Clark County

Event Date	Type of Event	Monitoring Sites Affected
June 19-20, 2018	Wildfire	Green Valley, Paul Meyer, Walter Johnson
May 6, 2020	Stratospheric Ozone Intrusion	Green Valley, Joe Neal, Paul Meyer, Walter Johnson
May 9, 2020	Stratospheric Ozone Intrusion	Paul Meyer, Walter Johnson
May 28, 2020	Stratospheric Ozone Intrusion	Paul Meyer, Walter Johnson
June 22, 2020	Wildfire	Joe Neal, Paul Meyer, Walter Johnson
June 26, 2020	Wildfire	Paul Meyer
September 2, 2020	Wildfire	Paul Meyer, Walter Johnson

The EPA started review of the EE packages by focusing on five of the events: June 19-20, 2018, May 6, 2020, May 9, 2020, June 22, 2020, and June 26, 2020. After reviewing the EE documentation, in a letter dated April 11, 2022, the EPA determined that Clark County DES did not adequately demonstrate that the exceedances for these five events satisfy the requirements for exclusion of the data due to an exceptional event as defined under the EER.²⁰

The 2007 EER and 2016 EER²¹ contain the procedural requirements and the criteria that the EPA uses to evaluate EE demonstrations. The demonstration must satisfy all of the EER criteria for the EPA to concur with excluding the air quality data from regulatory decisions. If any one of the criteria are not met, the EPA will nonconcur with the demonstration. In addition to the procedural requirements, the demonstrations must include: (1) a narrative conceptual model describing the event(s) causing the exceedance or violation and a discussion of how the emissions from the event(s) led to the exceedance or violation, (2) a demonstration of a clear

²⁰ Letter from Elizabeth J. Adams, Director, R9 Air and Radiation Division to Marci Henson, Director, Clark County Department of Environment and Sustainability, re: EPA Review of Clark County Department of Environment and Sustainability Exceptional Event Demonstrations for the 2015 Ozone NAAQS Las Vegas Nevada Nonattainment Area (Apr. 11, 2022).

²¹ The EPA promulgated the EER in 2007, pursuant to the 2005 amendment of CAA section 319. In 2016, the EPA finalized revisions to the EER, which superseded the 2007 EER. The 2007 EER and 2016 EER revisions added sections 40 CFR 50.1(j)-(r); 50.14; and 51.930 to title 40 of the CFR.

causal relationship between the event and the monitored exceedance or violation, (3) analyses comparing the event-influenced concentration to concentrations at the same monitoring site at other times to support the clear causal relationship, (4) a demonstration that the event was both not reasonably controllable and not reasonably preventable, and (5) a demonstration that the event was a human activity unlikely to recur at a particular location or was a natural event.

The EPA reviewed the Clark County DES EE demonstrations for wildfire events that occurred on June 19-20, 2018, June 22, 2020 and June 26, 2020. For all three events the EPA nonconcurred based on the conclusion that the events do not meet the requirements in the EER because the demonstrations have not sufficiently shown a clear causal relationship between the specific events and the monitored exceedances. These conclusions were based on review of the evidence presented in the demonstrations, including meteorological information, fire emission information, trajectory analysis, smoke modeling data, ground level monitoring data, and statistical modeling analysis. More information about the EPA's analysis on these EE demonstrations for wildfire events can be found in the docket for this action.²²

The EPA also reviewed the Clark County DES demonstrations for stratospheric ozone intrusion (SOI) events that occurred on May 6, 2020, and May 9, 2020. The EPA nonconcurred on these events based on the conclusion that the information presented in the demonstrations did not sufficiently show a clear causal relationship between the specific events and the monitored exceedances of the 2015 ozone NAAQS in the Las Vegas nonattainment area. These conclusions were based on review of the evidence presented in the demonstrations including satellite imagery and atmospheric models, trajectory analysis, skew-T diagrams, vertical ozone profiles, meteorological information, ground level monitoring data, matching day analysis, and statistical

²² Letter from Elizabeth J. Adams, Director, R9 Air and Radiation Division to Marci Henson, Director, Clark County Department of Environment and Sustainability, re: EPA Review of Clark County Department of Environment and Sustainability Exceptional Event Demonstrations for the 2015 Ozone NAAQS Las Vegas Nevada Nonattainment Area (April 11, 2022), Enclosures: Technical Support Document for EPA Nonconcurrence on O₃ Exceedances Measured in Clark County, Nevada on June 19, 2018, as a Wildfire Exceptional Event; Technical Support Document for EPA Nonconcurrence on O₃ Exceedances Measured in Clark County, Nevada on June 22, 2020, as a Wildfire Exceptional Event; Technical Support Document for EPA Nonconcurrence on O₃ Exceedances Measured in Clark County, Nevada on June 26, 2020, as a Wildfire Exceptional Event.

modeling analysis. The information presented in the SOI event submittals supported that SOI events had occurred, but the weight of evidence did not support the finding that ozone-rich stratospheric air was transported to the surface in the Las Vegas nonattainment area and caused the exceedances of the 2015 ozone NAAQS measured at the Las Vegas area monitors. More information about the EPA's analysis of these EE demonstrations for SOI events can be found in the docket for this action.²³

Based on the EPA's nonconcurrence on five exceptional event demonstrations, the 2018-2020 design value for the Las Vegas area remains above the 2015 ozone standard, at 0.074 ppm. In the 2016 revisions to the EER, "regulatory significance" was clarified to mean that the demonstrations affect the outcome of a regulatory action.²⁴ Even if the EPA concurred on the additional EE demonstrations submitted by the Clark County DES, the design value would still be above the standard; therefore, the remaining exceptional events no longer have regulatory significance for determining that the area attained by the Marginal area attainment date.

B. Extension of Marginal Area Attainment Date

In a letter dated September 9, 2021, the Clark County DES requested an extension of the Las Vegas area Marginal area attainment date; the letter is provided in the docket for this rulemaking.²⁵ Section 181(a)(5) of the CAA provides the EPA discretion to extend an area's applicable attainment date by one additional year upon application by any state if the state meets the two criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307. The two criteria are that (1) the state has complied with all requirements and commitments pertaining

²³ Letter from Elizabeth J. Adams, Director, R9 Air and Radiation Division to Marci Henson, Director, Clark County Department of Environment and Sustainability, re: EPA Review of Clark County Department of Environment and Sustainability Exceptional Event Demonstrations for the 2015 Ozone NAAQS Las Vegas Nevada Nonattainment Area (April 11, 2022), Enclosures: Technical Support Document for EPA Nonconcurrence on O₃ Exceedances Measured in Clark County, Nevada on May 6, 2020, as a Stratospheric O₃ Intrusion Exceptional Event; Technical Support Document for EPA Nonconcurrence on O₃ Exceedances Measured in Clark County, Nevada on May 9, 2020, as a Stratospheric O₃ Intrusion Exceptional Event.

²⁴ 81 FR 68269 (October 3, 2016).

²⁵ Marci Henson, Director, Clark County DES, "Request for a Determination of Attainment or One-year Extension of the 2015 Ozone NAAQS for the Las Vegas Valley Nonattainment Area." To Greg Lovato, Administrator, Nevada Division of Environmental Protection, September 9, 2021.

to the area in the applicable implementation plan; and (2) for a first attainment date extension, an area's fourth highest daily maximum 8-hour value for the attainment year must not exceed the level of the standard.²⁶ Based on the EPA's nonconcurrence on four exceptional event demonstrations for exceedances that occurred in 2020, the 2020 4th highest daily maximum 8-hour average remains above 0.070 ppm, at 0.078 ppm; therefore the area is not be eligible for a one-year extension. In the 2016 revisions to the EER, "regulatory significance" was clarified to mean that the demonstrations affect the outcome of a regulatory action.²⁷ Even if the EPA concurred on additional EE demonstrations, the 2020 4th highest daily maximum 8-hour average would still be above 0.070 ppm, therefore, the remaining exceptional events no longer have regulatory significance.

C. Determination of Failure to Attain and Reclassification

The EPA proposes to determine that the Las Vegas nonattainment area did not attain the 2015 ozone NAAQS by the August 3, 2021, attainment date and does not qualify for a 1-year attainment date extension because the area does not meet the two extension criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307. As discussed previously, the area has a 2018-2020 design value greater than 0.070 ppm.

If we finalize our action as proposed, the Las Vegas nonattainment area will be reclassified to Moderate, the next higher classification, as provided under CAA section 181(b)(2)(A)(i) and codified at 40 CFR 51.1303. The area is required to attain the standard "as expeditiously as practicable" but no later than 6 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2024. After reclassification to Moderate, if the area attains the 2015 ozone NAAQS prior to the Moderate area attainment date,

²⁶ The attainment year is the calendar year corresponding with the final ozone season for determining attainment; "attainment year ozone season" is defined as the ozone season immediately preceding a nonattainment area's maximum attainment date (*see* 40 CFR 51.1300(g)).

²⁷ 81 FR 68269 (October 3, 2016).

the state of Nevada may seek a Clean Data Determination, in which certain attainment planning SIPs would be suspended under 40 CFR 51.1318 or a redesignation to attainment.²⁸

D. Moderate Area Requirements and Proposed Schedule

Marginal nonattainment areas that failed to attain the 2015 ozone NAAQS by the attainment date will be reclassified as Moderate by operation of law upon the effective date of the final reclassification notice. Each responsible state air agency must submit SIP revisions that satisfy the general air quality planning requirements under CAA section 172(c) and specific requirements for Moderate areas under CAA section 182(b), as interpreted and described in the final SIP Requirements Rule for the 2015 ozone NAAQS.²⁹ This section describes the required Moderate area submission elements, provides additional discussion of the vehicle inspection and maintenance program requirement, and proposes a submission and implementation deadline for Moderate area SIP revisions.

1. Required Submission Elements

For each new Moderate ozone nonattainment area, the SIP revision requirements include: (1) an attainment demonstration (CAA section 182(b) and 40 CFR 51.1308); (2) provisions for reasonably available control measures (RACM) (CAA section 172(c)(1) and 40 CFR 51.1312(c)) and reasonable available control technology (RACT) (CAA section 182(b)(2) and 40 CFR 51.1312(a)–(b)); (3) reasonable further progress (RFP) reductions in volatile organic compounds (VOC) and/or nitrogen oxide (NO_x) emissions in the area (CAA sections 172(c)(2) and 182(b)(1) and 40 CFR 51.1310); (4) contingency measures to be implemented in the event of failure to meet a milestone or to attain the standard (CAA section 172(c)(9)); (5) NO_x and VOC emission offsets at a ratio of 1.15 to 1 for major source permits (CAA section 182(b)(5) and 40 CFR 51.165(a)); and, (6) a vehicle inspection and maintenance program, if applicable, which is

²⁸ The EPA's Clean Data Policy, as codified for the 2015 ozone NAAQS at 40 CFR 51.1318, suspends the requirements for states to submit certain attainment planning SIPs such as the attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures for so long as an area continues to attain the standard.

²⁹ See 40 CFR 51.1300 *et seq.*

discussed in the following section of this notice (CAA section 181(b)(4) and 40 CFR 51.350).³⁰

We are providing additional discussion in the following sections for these Moderate area requirements: (a) RACM and RACT; and (b) vehicle inspection and maintenance.

a. RACM and RACT

States must provide an analysis of—and adopt all—RACM, including RACT needed for purposes of meeting RFP or timely attainment of the ozone NAAQS. The EPA interprets the RACM provision at CAA section 172(c) to require a demonstration that the state has adopted all reasonable measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and thus that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area.³¹ For areas reclassified as Moderate, such an analysis should include an evaluation of RACT controls for sources emitting 100 tons per year or more that are currently reasonably available.

The EPA has long taken the position that the statutory requirement for states to assess and adopt RACT for sources in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas.³² In addition to the independent RACT requirement, states have a statutory obligation to apply RACM (including such reductions in emissions from existing sources in the area as may be obtained through implementation of RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable. Therefore, to the extent that a state adopts new or additional RACT controls to meet RFP requirements or to demonstrate attainment as

³⁰ See also the requirements for Moderate ozone nonattainment areas set forth in CAA section 182(b) and the general nonattainment plan provisions required under CAA section 172(c).

³¹ See 80 FR 12264, 12282, March 6, 2015; and 40 CFR 1112(c).

³² See Memo from John Seitz, “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard” (1995), at 5 (explaining that Subpart 2 requirements linked to the attainment demonstration are suspended by a finding that a nonattainment area is attaining but that requirements such as RACT must be met whether or not an area has attained the standard); see also 40 CFR 51.1318 (suspending attainment demonstrations, RACM, RFP, contingency measures, and other attainment planning SIPs with a finding of attainment).

expeditiously as practicable, those states must include such RACT revisions with the other SIP elements due as part of the attainment plan required under CAA sections 172(c) and 182(b).

b. Vehicle Inspection and Maintenance (I/M)

A Basic I/M program is required for all urbanized Moderate areas under the 2015 ozone NAAQS. The Las Vegas nonattainment area is currently operating I/M programs as part of the maintenance plan for the 1971 carbon monoxide standard for which the area had been classified as Serious nonattainment and subsequently redesignated. If we finalize our action as proposed, the Clark County DES and NDEP would need to conduct and submit a performance standard modeling analysis as well as make any necessary program revisions as part of their Moderate area SIP submissions to ensure that the I/M program is operating at or above the Basic I/M performance standard level for the 2015 ozone NAAQS. The Clark County DES and NDEP may determine through the performance standard modeling analysis that the existing SIP-approved program would meet the performance standard for purposes of the 2015 ozone NAAQS without modification. In this case, the Clark County DES and NDEP could submit a SIP revision with the associated performance modeling and a written statement certifying their determination in lieu of submitting new revised regulations. The applicable requirements for Moderate ozone nonattainment areas that are required to adopt a Basic I/M program are described in sections 182(a)(2)(B), and 182(b)(4), of the CAA and further defined in the EPA's I/M rule (40 CFR part 51, subpart S). The performance standard³³ of a model Basic I/M program is established in the CAA and further detailed in the I/M rule.³⁴ A more detailed description of the requirements for the SIP submittal demonstrating that the current I/M program meets the CAA requirements was included in the EPA's April 13, 2022 proposed rule for other 2015 ozone nonattainment areas

³³ An I/M performance standard is a collection of program design elements which defines a benchmark program to which a state's proposed program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC and NO_x. The EPA intends to provide appropriate guidance for Basic I/M programs under the 2015 ozone NAAQS separate from this rulemaking.

³⁴ See 40 CFR 51.352(e)). The EPA is not proposing changes to its I/M regulations in this notice; however, additional clarification in this preamble is provided to assist the state in understanding specific I/M program requirements due to being reclassified as Moderate.

under consideration for reclassification to Moderate.³⁵ The I/M SIP submissions are due at the same time as the other Moderate area submission elements.³⁶

2. SIP Submission and Implementation Deadline

On August 3, 2018, when final nonattainment designations became effective for the 2015 ozone NAAQS, states responsible for areas initially classified as Moderate were required to prepare and submit SIP revisions by deadlines relative to that effective date. For those areas, the submission deadlines ranged from 2 to 3 years after the effective date of designation, depending on the SIP element required (e.g., 2 years for the RACT SIP, and 3 years for the attainment plan with RACM and attainment demonstration). Initial Moderate areas were also required to implement RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designations, i.e., January 1, 2023. However, the SIP submission deadlines for initial Moderate areas have passed and the EPA is proposing to use its discretion under CAA section 182(i) to adjust the SIP deadlines that would otherwise apply.³⁷ The EPA recently proposed similar adjustments in SIP revision and RACT implementation deadlines for other reclassified Moderate areas in an April 13, 2022 rulemaking.³⁸

The EPA is proposing that the state of Nevada submit SIP revisions addressing all Moderate area requirements no later than January 1 of the 5th year after the effective date of designations, i.e., January 1, 2023. The “schedule prescribed in connection with” the attainment planning requirements for Moderate areas is 3 years from designation.³⁹ However, given that the Las Vegas nonattainment area is being reclassified rather than newly designated as a Moderate

³⁵ 87 FR 21842.

³⁶ 40 CFR 51.372(b)(2) states – “A SIP revision required as a result of a change in an area's designation or classification under a NAAQS for ozone, including all necessary legal authority and the items specified in paragraphs (a)(1) through (8) of this section, shall be submitted no later than the deadline for submitting the area's attainment SIP for the NAAQS in question.”

³⁷ CAA section 182(i) provides that areas reclassified under CAA section 181(b)(2) shall generally meet the requirements associated with their new classifications “according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.”

³⁸ 87 FR 21842.

³⁹ See CAA section 182(i).

areas, the EPA is proposing that aligning the Las Vegas nonattainment area's deadline with the deadlines proposed for other reclassified areas is appropriate and necessary for “consistency among the submissions” of all reclassified Moderate areas across the country.

The EPA’s implementing regulations for the 2015 ozone NAAQS do not address SIP submission deadlines for reclassified areas, except for RACT SIPs. Specifically, 40 CFR 1312(a)(ii) establishes a RACT SIP submission deadline for areas classified Moderate or higher of either 24 months from the reclassification effective date or a deadline established by the Administrator in the reclassification action. In the case of the potential newly reclassified Moderate area addressed in this proposal, a RACT SIP submission deadline of 24 months after an anticipated 2023 effective date would fall in 2025. Because a 2025 deadline would exceed the applicable Moderate area maximum attainment date of August 3, 2024, we rejected a 24-month submission deadline and are instead proposing to use the Administrator’s discretion under CAA section 182(i) to establish a January 1, 2023, SIP submission deadline that would apply for RACT (per 40 CFR 1312(a)(ii)) and all other required Moderate area SIP submissions. Our objective is to establish a single deadline that would not extend beyond our proposed deadline for implementing RACT and to provide for consistency among the required SIP submissions. The EPA adopted this approach previously for Marginal areas reclassified to Moderate for failure to timely attain the 2008 ozone NAAQS.⁴⁰

As mentioned previously, we are proposing that the state must provide for implementation of all RACT needed for purposes of meeting RFP or timely attaining the ozone NAAQS as expeditiously as practicable but no later than January 1, 2023. The EPA’s implementing regulations for the 2015 ozone NAAQS require that the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of

⁴⁰ “Final Rule – Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards” (81 FR 26697, 26705, May 4, 2016).

the third year after the associated SIP submission deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification.⁴¹

Because January 1 of the third year after the proposed January 1, 2023 SIP submission deadline would fall on January 1, 2026, this date would exceed the applicable Moderate area maximum attainment date of August 3, 2024. The EPA's implementing regulations for the 2015 ozone NAAQS require that, for areas initially classified as Moderate or higher, a state shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation, which corresponds with the beginning of the attainment year for initial Moderate areas (January 1, 2023).⁴² The modeling and attainment demonstration requirements for 2015 ozone NAAQS areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season, notwithstanding any alternative deadline established per 40 CFR 1312.⁴³ These regulations allow a comparable amount of time for sources to meet RACT requirements as originally anticipated under the 1990 CAA Amendments, with the objective that RACT measures be in place to influence an area's attainment year air quality and design value.⁴⁴

The start of the ozone season varies among states and is either January or March for potential reclassified Moderate areas addressed in the April 13, 2022 national proposal.⁴⁵ For this reason, the EPA rejected an approach that would establish variable RACT implementation deadlines corresponding to an area's defined ozone season starting month and proposed a single RACT implementation deadline for all newly reclassified Moderate areas corresponding with the beginning of the applicable attainment year, i.e., January 1, 2023. Because the start of the ozone season for the Las Vegas ozone nonattainment area is January,⁴⁶ the January 2023 deadline is

⁴¹ See 40 CFR 1312(a)(3)(ii).

⁴² See 40 CFR 51.1312(a)(3)(i).

⁴³ See 40 CFR 51.1308(d).

⁴⁴ See CAA section 182(b)(2).

⁴⁵ 87 FR 21842. See also 40 CFR part 58, appendix D, section 4.1, Table D-3).

⁴⁶ Id., at Table D-3.

consistent with the beginning of the applicable attainment year for the area, is the same as the single RACT implementation deadline for all initial Moderate areas per 40 CFR 51.1312(a)(3) and would require implementation of any identified RACT as early as possible in the attainment year to influence an area's air quality and 2021-2023 attainment design value. Aligning the SIP submission and RACT implementation deadline would also ensure that SIPs requiring control measures needed for attainment, including RACM, would be submitted no later than when those controls are required to be implemented. Our proposed deadline for the Las Vegas Moderate area SIP submissions and RACT implementation would also treat states consistently, in keeping with CAA section 182(i).

The EPA requests comment on our proposal to align the SIP submission deadline and RACT implementation deadline for the Las Vegas nonattainment area, if reclassified to Moderate, and requiring that any RACT needed for meeting RFP or timely attainment of the 2015 ozone NAAQS be implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, i.e., January 1, 2023.

With respect to the implementation deadline for any revisions to the current I/M program that may be necessary, if Clark County DES and NDEP wish to use emissions reductions from their revised I/M program for the 2015 ozone NAAQS, they would need to have such revisions fully established and start testing as expeditiously as practicable but no later than the beginning of the applicable attainment year, i.e., January 1, 2023. However, we also request comment on two alternative implementation deadlines for the I/M program revisions (whose emission reductions are not intended to be relied upon for attainment or RFP) that are consistent with the EPA's proposed action for other areas, for new and revised Basic I/M programs: the first to allow newly required I/M programs to be fully implemented no later than 4 years after the effective date of reclassification; and the second to align the I/M implementation deadline with the attainment date for Moderate areas under the 2015 ozone NAAQS. A more detailed description of these I/M implementation date options for certain situations can be found in the

EPA's April 13, 2022, proposed rule for other 2015 ozone nonattainment areas under consideration for reclassification to Moderate.⁴⁷

E. Summary of Proposed Action

The EPA is proposing to determine that the Las Vegas nonattainment area failed to attain the 2015 ozone standard by its Marginal area attainment date of August 3, 2021, based on a 2018-2020 design value of 0.074 ppm. The EPA is also proposing to determine that the Las Vegas nonattainment area is not eligible for a one-year extension of the Marginal area attainment date because the area's 2020 4th highest daily maximum 8-hour average is 0.078 ppm. CAA section 181(b)(2) requires areas that have failed to attain by their attainment date be reclassified to the higher of (i) the next highest classification, or (ii) the classification that corresponds with the area's design value as of the time that the EPA publishes the document identifying the areas that have failed to attain by their attainment date. Accordingly, the EPA is proposing that the Las Vegas Marginal nonattainment area failed to attain the 2015 ozone NAAQS by August 3, 2021, and therefore the area must be reclassified as Moderate. The EPA is further proposing that the state of Nevada must submit SIP revisions to fulfill the CAA's Moderate area requirements by January 1, 2023. The EPA is taking comment for 30 days on the determination of failure to attain and subsequent reclassification from Marginal to Moderate.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

⁴⁷ See 87 FR 21856.

This rule does not impose any new information collection burden under the PRA not already approved by the OMB.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, tribes, or the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.”

The Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony have areas of Indian country located within the Las Vegas Valley nonattainment area for the 2015 ozone

NAAQS. The EPA has concluded that the proposed rule may have tribal implications for this tribe for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. A tribe that is part of a Marginal nonattainment area that is reclassified Moderate is not required to submit a TIP revision to address new Moderate area requirements. However, if the EPA finalizes the determination of failure to attain proposed in this action, the nonattainment new source review major source threshold and offset requirements would change for stationary sources seeking preconstruction permits in any nonattainment areas newly reclassified as Moderate, including on tribal lands within these nonattainment areas.

In a letter dated July 16, 2021, the EPA invited the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony to consult on our evaluation and determination of whether the Las Vegas nonattainment area attained or failed to attain by its Marginal area attainment date. The EPA intends to notify the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony of this proposed action and we will initiate government-to-government consultation if requested.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Upon review, the EPA did not identify any particular facts or circumstances that would indicate this action will have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

Furthermore, with respect to the determinations of whether areas have attained the NAAQS by the attainment date, the EPA has no discretionary authority to address environmental justice in these determinations. The CAA directs that within 6 months following the applicable attainment date, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area attained the standard by that date. CAA section 181(b)(2)(A). Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law to either the next higher classification or the classification applicable to the area's design value.

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements and Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: July 16, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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